

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1758 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VALJI KUNVARJI HIRANI & 1

Versus

MANJI KUNVARJI HIRANI

Appearance:

MR NV ANJARIA for Petitioners

MR TUSHAR MEHTA for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 18/04/96

ORAL JUDGEMENT

1. The petitioners are the original plaintiffs and respondent defendant is the brother of the petitioners. The petitioners instituted Regular Civil Suit No. 61 of 1995 in the Court of Civil Judge, Junior Division at Bhuj - Kachchh inter alia for declaration that they have got share in the undivided property of their father Kunvarji Hirani and that since attempts were being made by respondent defendant to get the said property transferred

to his name, injunction was also prayed for. The petitioners have claimed their share in Survey Nos. 59/2, 63/1 and 93/1 and one house situated in Ward No. 4 bearing House No. 11 at village Mirzapur. It may be noted that in such suit the other brothers of the petitioners as well as the father of the petitioners are not impleaded as party. The respondent defendant has appeared and has taken up the contention that the suit fields are already sold to him by registered sale deed by his father as back as 8th of February, 1991 and that mutation entry to that effect is already effected in the revenue record. He has further submitted that since the properties are also transferred to him for valuable consideration and since no prayer is made for setting aside the said sale deed in the present suit or in any of the pending suits, no interim relief against transfer and/or alienation of the suit property should be granted.

2. It may be noted at this stage that there are number of litigations pending between the brothers, between father and his sons and they are Special Civil Suit Nos. 34 of 1994 which is said to be a suit for partition, Spl. Civil Suit No. 1 of 1995, which is filed by Laxmanbhai Kunvarji Hirani - second petitioner herein against his father and Regular Civil Suit No. 61 of 1995, the present suit. It is clear that in one of the suits, relief of partition is prayed for, in which the brothers are not impleaded as parties. In the suit which is filed only against the father of the present plaintiff, interim relief is granted by the trial court, but, in such suit, the present defendant is not a party. In the third suit, which is not specifically a suit for partition, but a suit where declaration for all plaintiffs share in the suit property is sought. The court has by passing an order below Exhibit - 5 rejected the application and in Appeal being Misc. Civil Appeal No. 151 of 1991, the District Judge has also dismissed the Appeal. It is against such concurrent judgments and orders of two courts below that the present Civil Revision Application is filed.

3. Having heard Mr. N.V. Anjaria, learned Counsel for the petitioners and Mr. K.G. Vakharia, Senior Counsel appearing for Mr. Tushar Mehta, this Court is of the opinion that interest of justice will be met if the respondent defendant is directed to maintain status quo with respect to the suit property till 31st of July, 1996. It will be open to the present petitioners to take appropriate action in the suit instituted by them so as to see that the case which is put forward before this Court by them in absence of some of the parties, is

properly pleaded and brought to the notice of the court.
After the expiry of the aforesaid period, the respondent
shall be under no obligation to maintain status quo with
respect of the suit property.

4. In the result, the Rule is discharged subject to
the aforesaid direction issued against the respondent
defendant. No costs.
